IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1674 OF 2004

1. Bombay Electric Workers' Union, a trade union registered under the Trade Unions Act, 1926, having its office at 7, Tayabi Mansion, Ground Floor, Dr.Batliwala Road, Parel, Mumbai--400 012.
2. R.K.Kottary, General Secretary, Bombay Electric Workers' Union, having his office at 7, Tayabi Mansion, Ground Floor, Dr.Batliwala Road, Parel, Mumbai--400 012.
3. S.R.Patil, Treasurer, Bombay Electric Workers' Union, having his office at 7, Tayabi Mansion, Ground Floor, Dr.Batliwala Road, Parel, Mumbai--400 012. : Petitioners

V/s.

1. Vithal S. Gaikwad, C/o. Bombay Electric Workers' Union, Tayabi Mansion, Parel, Mumbai--400 012.
2. Felix D'Souza, C/o. Bombay Electric

Workers' Union, BSES Ltd., BSES House, Santacruz (E),Mumbai--55.

3. BSES Limited, a public limited Company incorporated under the provisions of the Indian Companies Act, 1913, having its registered office and Corporate Office at BSES House, Santacruz (E), Mumbai--55.

4. V.P.Rothe, Member, Industrial Court, Maharashtra, at Mumbai. : Respondents

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Mr.K.K.Singhvi, Senior Counsel, i/b. Mr.G.S.Kulkarni for the petitioners.

Mr.A.V.Bukhari i/b. Mr.Kishore Shetty for respondent no.1.

Mr.J.P.Cama with Mr.S.N.Shah i/b. Mr.K.P.Anilkumar for respondent nos.2 & 3.

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With

WRIT PETITION NO.1673 OF 2004

1. Bombay Electric Workers' Union, a trade union registered under the Trade Unions Act, 1926, having its office at 7, Tayabi Mansion, Ground Floor, Dr.Batliwala Road, Parel,

Mumbai--12 through its President,
Shri Felix D'Souza.

2. Felix D'Souza, President, Bombay Electric Workers' Union, 7,Tayabi Mansion, Ground Floor, Dr.Batliwala Road, Parel, Mumbai--400 012.
3. Arun Karekar, Working President, Bombay Electric Workers' Union, 7, Tayabi Mansion, Ground Floor, Dr.Batliwala Road, Parel, Mumbai--400 012.
4. B.J.Redekar, Vice President, Bombay Electric Workers' Union, 7, Tayabi Mansion, Ground Floor, Dr.Batliwala Road, Parel, Mumbai--400 012.
5. Janardhan Uchil, Vice President, Bombay Electric Workers' Union, 7, Tayabi Mansion, Ground Floor, Dr.Batliwala Road, Parel, Mumbai--12. : Petitioners

V/s.

1. Vithal S. Gaikwad, General Secretary, Bombay Electric Workers' Union, 7, Tayabi Mansion, Ground Floor,

Dr.Batliwala Road, Parel,

Mumbai--400 012.

2. BSES Limited, a public limited Company incorporated under the provisions of the Indian Companies Act, 1913, having its registered office and Corporate Office at BSES House, Santacruz (E), Mumbai--55.

3. V.P.Rothe, Member, Industrial Court, Maharashtra, at Mumbai. : Respondents

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Mr.S.S.Naphade i/b.A.K.Ovalekar for the petitioners.

Mr.E.P.Bharucha with Ms Shobhana Gopal i/b. Mr.Kishore Shetty for respondent no.1.

Mr.J.P.Cama with Mr.S.N.Shah i/b. Mr.K.P.Anilkumar for respondent nos.2 & 3.

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CORAM : F.I.REBELLO & S.R.SATHE,JJ.

Date of reserving the judgement): 13.7.2004

Date of pronouncing the judgement): 1.10.2004

ORAL JUDGEMENT (Per Rebello,J.)

1. Both these petitions can be disposed of by this common

judgement as they impugn the order dated 11.2.2004. By that order, the learned Industrial Court, Mumbai, allowed the report filed under exh.O-12 by the Commissioner appointed by the Court and admitted it on record. By a further direction, the elected representatives were directed to take the charge of their posts as per the result declared by the learned Commissioner.

2. Writ Petition no.1674 of 2004 arises out of Application (ICTU) No.8 of 2002. Petitioner nos.2 and 3 herein were opponent nos.1 and 2. Petitioner no.1 was not a party. Respondent no.1 was original applicant no.1 and respondent no.2 was original opponent no.4. Original applicant nos.2 and 3 as also original opponent nos.3, 5, 6 and 7 are not parties to the petition. For the sake of convenience, Vithal S. Gaikwad is referred to as representing the "Gaikwad group", R.K. Kottary is referred to as representing the "Kottary group" and Felix D’Souza is referred to as representing the "D’Souza group".

3. Writ Petition no.1673 of 2004 arises out of the common order dated 11.2.2004. Petitioner nos.2, 3, 4 and 5 were opponent nos.4, 5, 6 and 7 in Application (ICTU) no.9 of 2002. Petitioner no.1 was not a party to the proceedings.

Respondent no.1 was not an opponent in the said application. Applicant nos.2 and 3 are not parties to the petition. Similarly, opponent nos.1, 2 and 3 are also not parties to the petition.

4. On facts as pleaded, it is set out that on 15.2.2000, elections were held for the posts of office bearers/members of the Bombay Electric Workers' Union (hereinafter referred to as the "Union"). The case of the petitioners in Writ Petition no.1674 of 2004 is that Kottary along with his supporters were elected as office bearers of the Union. This was intimated to the Registrar of Trade Unions by the Union's letter dated 16.2.2000. It is the case of the petitioners that Gaikwad and D'Souza groups did not reconcile to Kottary and his group and their elections and claimed that D'Souza and his supporters had been elected. It is the case of Kottary group that the dispute arose mainly between Kottary group and Gaikwad group regarding elections to the office bearers of the Union. Gaikwad group even approached the Industrial Court by filing Complaint (ULP) no.480 of 2001. The Industrial Court by its order dated 29.6.2001 directed respondent no.2 to approach the authority under section 28A(1) of the Trade Unions Act to establish its claim. The Gaikwad group also filed Civil Suit no.1611 of 2000 in

the Mumbai City Civil Court for various reliefs which, inter alia, included a declaration that Kottary and his supporters were not the elected office bearers of the Union. The suit was dismissed by an order dated 3.10.2000.

5. It is then contended that Complaint (ULP) no.610 of 2001 was filed against the Gaikwad group wherein an application was filed under section 32 of the MRTU & PULP Act, 1971 by the Gaikwad group praying that till the final disposal of the complaint, that Court be pleased to pass an appropriate order to the effect that the elections to the post of office bearers and other committee members of the said Union be held by secret ballot and certain persons be appointed as Election Officers. The said application was filed on 21.4.2001. Gaikwad made a statement that he did not want to pursue the same and, accordingly, that application was disposed of on 25.10.2001. Gaikwad then filed a Writ Petition on the Original Side of this Court, being Writ Petition no.2842 of 2001, seeking directions for quashing and setting aside the orders issued by the Registrar of Trade Unions. The petition was heard by a Division Bench of this Court which dismissed it on the ground that material facts were suppressed and false statements were made. Gaikwad group,

it is set out, then approached the Registrar of Trade Unions and sought a reference to be made to the Industrial Court for seeking relief against Kottary group. Two applications came to be filed, being Application (ICTU) nos.8 and 9 of 2002. By an interim order dated 27.3.2003, the Industrial Court allowed the D'Souza group and his panel to act as office bearers of the Union during the pendency of the complaint. It is contended that the Industrial Court was of the view that there should be someone to carry on the work of the said Union and, therefore, it was proper to allow Gaikwad to do that job. Against that order, Kottary group preferred a petition before this Court, being Writ Petition no.1435 of 2003. By an order dated 25.8.2003, a Division Bench of this Court was pleased to direct the Industrial Court to decide the main applications after finding out as to whether the Original Application filed by Gaikwad was rendered infructuous or not. It is set out that the Division Bench also observed that any fresh application for elections for the next term may also be considered within one month from the date of the order.

6. On 5.9.2003, during the course of hearing before the Industrial Court, the Industrial Court by consent of the parties, appointed one Mr.Gopalkrishnan, Advocate, as

Court Commissioner with directions to start the election process so as to complete the same by 31.10.2003. By a formal order dated 8.9.2003, the Industrial Court directed the Commissioner to conduct election fairly and impartially by updating the voters' list and giving an opportunity to all the concerned parties and their members as per the constitution of the Union, the register of members maintained by the Union and inviting objections by the parties and their members. It is then set out that the Court Commissioner, however, acted in a biased manner. He accepted all the voters' claim by Kottary group and their supporters for inclusion of their names in the voters' list. By this process, more than 2023 objections were rejected on flimsy grounds, such as non-production of receipts for payments and non-intimation of the payment of subscription in the Bank to respondent no.1 by the members, though there were disputes regarding the office bearers.

7. Being aggrieved, Kottary group moved the Industrial Court on 5.11.2000 with a written application for setting aside the ruling of the Court Commissioner dated 21.10.2003. The Industrial Court by its order dated 7.11.2003 rejected the said application. Being aggrieved, Kottary group once again filed a petition before this

Court being Writ Petition no.2939 of 2003. During the pendency of the petition, the Court Commissioner declared uncontested results of the election on 13.11.2003, though according to the schedule and the order of the Industrial Court, the election had to be declared on 18.11.2003. As the election results had already been declared, the learned Division Bench of this Court, by its order dated 17.12.2003, disposed of Writ Petition no.2939 of 2003 with a direction to the Industrial Court to decide the matter on merits. It is submitted that this Court while disposing of the matter made it clear that the dispute with regard to the election can be agitated before the Industrial Court.

8. The Industrial Court then was seized of the matter and by order dated 11.2.2004 admitted the report filed by the learned Commissioner on record. The Industrial Court further directed that the elected representatives shall take the charge of their posts as per the results declared by the learned Commissioner. It is set out that the Industrial Court has observed that the remedy of the petitioners is to challenge the election as to approach the Industrial Court under section 28A(1) of the Trade Unions Act by obtaining the consent of the Registrar. The present petitions have been filed against the said

judgement and order of the Industrial Court dated 11.2.2004.

9. It may be further mentioned that Gaikwad group in the application filed has sought to contend that on 27.3.2003 the Industrial Court passed an interim order in Application (ICTU) nos.8 and 9 of 2002 holding that the Gaikwad group elected in the AGM held on 15.2.2000 and mentioned in the letter dated 16.2.2000 addressed by the Gaikwad group to the Registrar of Trade Unions was held to be legally elected office bearers of the petitioner-Union. It is pointed out that Kottary group had formed a new Union in the name of Mumbai Vidyut Kamgar Sangh. It is further set out that by the interim order, it was held that Kottary and Patil, petitioner nos.2 and 3 in Writ Petition no.1674 of 2004, were not even primary members of the Union. The order dated 27.3.2003 was challenged before this Court in Writ Petition no.1435 of 2003. The petition was disposed of without disturbing the order of the Industrial Court.

10. It is then pointed out that the Commissioner took charge of the election to the office bearers and members of the Managing Committee of the Union and finalised the voters' list of the members who were eligible to

stand/vote in the elections after calling for objections. Around 2023 objections were received and the same were rejected after giving a hearing to the objectors. It is pointed out that every order was made after recording the notes of evidence and passing a speaking order. Nominations to the various posts were called for and after withdrawal, it was found that the contestants were equal to the number of posts for which elections were to be held and, hence, they were all declared to be elected on 13.11.2003. The Commissioner submitted his report to the Industrial Court on 18.11.2003. Kottary group filed a petition wherein personal and adverse allegations were made against the Commissioner. The petition was dismissed by an order dated 17.12.2003. Kottary group then moved a transfer application seeking transfer of the matter. That was dismissed on 24.11.2003 by the President of the Industrial Court. The Commissioner was cross-examined on the report. None of the petitioners stepped into the witness-box to substantiate the allegations made against the Commissioner nor was any evidence led to justify claims to be members of the Union. The Court as the record shows examined the Commissioner. The impugned order then came to be passed on 11.2.2004. From the documents on record, it would be clear that 7577 members' names were included in the voters' list and were given

voting rights; 4819 from BEST and 2758 from BSES Ltd. This was in terms of the voters' list submitted by the Commissioner to the Industrial Court.

11. The learned counsel for the petitioners in Writ Petition no.1674 of 2004, firstly, submits that the Industrial Court was under total misconception of the order of this Court dated 17.12.2003 and refused to go into the merits of the election dispute on the ground that the remedy to challenge the election was to approach the Industrial Court under section 28A(1) of the Trade Unions Act, after obtaining the consent of the Registrar. It is, therefore, submitted that inasmuch as the Industrial Court refused to go into the election dispute, the order is required to be set aside.

12. It is then submitted that the Commissioner did not bring the voters' list up-to-date by allowing the members to pay the subscription and, accordingly, update the members' list, but on the contrary, rejected the application for the members for being included in the voters' list on flimsy and unsustainable grounds. It is submitted that instead of following the direction of the Industrial Court, the Commissioner blindly relied upon the voters' list prepared by Gaikwad who refused to produce

any reliable evidence of those persons having paid the subscription on the plea that he had been restrained by the City Civil Court from operating the Bank account. The rejection of objection filed on behalf of Kottary group was on flimsy grounds. Various instances have been set out. It is also pointed out that though according to the election rules, a voter had to pay subscription upto 30.9.2003, yet the employees of BEST, including Gaikwad, who had paid subscription only upto June 2003, were allowed to get registered as voters. It is then submitted that the Registrar of Trade Unions had not given his approval to the alleged resolution passed by the General Body for increase of subscription from Rs.5/- per month to Rs.10/-. Yet the members were prevented from giving their monthly subscription of Rs.5/- by Gaikwad and the Commissioner.

It is then submitted that the Industrial Court ignored the important admissions made by the Commissioner in his evidence which included that the signatures of Kottary and Patil were not taken in token of their attendance of any of the meetings held by him as the Commissioner. It is lastly submitted that the elections held by the Commissioner is unfair, partial, undemocratic, unjust and illegal. The interest of justice requires that

a free and fair election of the office bearers of the Union be conducted under the supervision of this Hon'ble Court by appointing an independent person after giving an opportunity to all the members to pay all the arrears up-to-date and get registered as voters.

On behalf of the petitioners in Writ Petition no.1673 of 2004 i.e. D'Souza group, the arguments advanced on behalf of Kottary group in Writ Petition no.1674 of 2004 have been adopted.

13. On behalf of Gaikwad group, it is submitted that the projection by Kottary group as the General Secretary and Treasurer is in gross violation of the order of the Industrial Court dated 27.3.2003 wherein it has been held that they are not the office bearers of petitioner no.1 Union and on this count, the petition ought to be rejected. It is then submitted that the Union and BSES Ltd. were not parties before the Industrial Court and they cannot be impleaded as parties. Similarly, elected persons have not been made parties. The petition, therefore, suffers from non-joinder of necessary parties. It is then set out that out of 2023 objectors, names of 178 persons are already mentioned in the voters' list and, as such, their objections were meaningless. Kottary and

Patil on behalf of themselves and 15 others have stated that Gaikwad refused to accept their membership and, hence, they have deposited the amount in the account of the Union i.e. Account no.16243 in Canara Bank, Santacruz (East) Branch on 26.3.2002. It is submitted that if Kottary and Patil are claiming themselves to be the office bearers of the Union, there does not arise the question of accepting membership. All 17 are members of BEST undertaking and the payment of the Union subscription is made by check off and not direct payment. A cheque is issued by the BEST Undertaking and the same is handed over to the Union. The said cheque is deposited in the Bank Account at Dadar, Khodadad Circle Branch of the Union Bank of India. Similarly, the subscription amount collected from the employees of BSES Ltd. is deposited in Santacruz Branch of Canara Bank. There are separate accounts maintained for BEST and BSES employees. The amount alleged to have been deposited by Kottary on behalf of himself and 16 others was deposited in the Bank account pertaining to the employees of BSES Ltd. and not BEST Undertaking and no intimation with regard to the same was given to any of the office bearers of the Union. Even if it is the case of Kottary that he had deposited the membership subscription, that grievance could have been made to the Industrial Court when the Industrial Court in

its order dated 27.3.2003 held that Kottary and Patil were not even primary members of the Union.

It is submitted that Kottary and Patil were aware of their names not being in the voters list as far back as 15.7.2004 when Gaikwad submitted the voters' list updated till June 2004 to the Industrial Court and the copies of the same were given to the Kottary group. No objection was raised before the Industrial Court in this regard. It is submitted that the Commissioner had finalised the list of 7,577 members. In these circumstances, it is submitted that the petition ought to be dismissed.

In addition, insofar as Writ Petition no.1673 of 2004 is concerned, it is submitted that petitioner nos.2 to 4 did not make payment as there were disparity in the membership subscription. The workers employed in BEST and BSES Ltd. paid Rs.5/-. It is submitted that petitioner nos.2 to 4 were office bearers of the Union when Resolution to that effect was passed on 15.2.2000. No notice has been given by the petitioners to pay the arrears and even as of now, they have not made any offer to pay membership fee. Even with regard to the contentions that Gaikwad did not take their subscription, it is submitted that petitioner nos.2 to 4 are claiming to

be office bearers of the Union and, as such, the question of making payment of subscription to respondent no.1 does not arise. Even assuming that Gaikwad had refused to accept the subscription of petitioner nos.2 to 4, they did not remit the same by post nor did they protest against the alleged refusal. The petitioners were aware that their names were in the voters' list as far back as 15.7.2004. For the aforesaid reasons, it is submitted that the petition be dismissed.

14. With the above, we may now consider the objections as raised on behalf of the petitioners, firstly, that the learned Industrial Court refused to go into the election dispute on the ground that the power to challenge the election was to approach the Industrial Court under section 28A(1) of the Trade Unions Act. Section 28A of the Trade Unions Act, 1926 as amended in the State of Maharashtra reads as under:-

> "28A. *Power of Industrial Court to decide certain disputes*.-- When there is a dispute as respects whether or not any person is an office-bearer or member of a registered Trade Union (including any dispute relating to a wrongful expulsion of any such

office-bearer or member), or where there is any dispute relating to the property (including the account books) of any registered Trade Union, any member of such registered Trade Union for a period of not less than six months may, with the consent of the Registrar, and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1946, for decision.

(2) The Industrial Court shall, after hearing the parties to the dispute decide the dispute, and may require an office-bearer or member of the registered Trade Union, to be appointed whether by election or otherwise under the supervision of such person as the Industrial Court may appoint in this behalf or removed, in accordance with the rules of the Trade Union:

Provided that, the Industrial Court may, pending the decision of the dispute, make

> an interim order specifying or appointing any person or appointing a committee of Administration for any purpose under the Act including the purpose of taking possession or control of the property in dispute and managing it for the purposes of the Union pending the decision.
>
> (3) The decision of the Industrial Court shall be final and binding on the parties, and shall not be called in question in any civil court."

It is thus clear from the statutory provisions that a dispute as respects whether or not any person is an office-bearer or member of a registered trade Union, with the consent of the Registrar be referred to the Industrial Court constituted under the B.I.R. Act. Under sub-section (3), the decision of the Industrial Court is final and binding on the parties and shall not be called in question in any Court. This Court while passing the order on 17.12.2003 was dealing with an interlocutory order of 7.11.2003. It was also noticed by the Court that election was also held and results of the same were declared on 13.11.2003. The observations in para 5 must

be considered in that context that the Industrial Court should go into those questions which were within its jurisdiction. It cannot be stated that this Court would direct the Industrial Court to assume jurisdiction in respect of a matter of which it had no jurisdiction, considering the language of section 28A(1), which had not been referred to it by the Registrar. Therefore, even at the highest, even if the observations are taken in the true and literal meaning, the order dated 17.12.2003 can be to agitate those disputes in respect of holding of elections. There is no positive finding recorded that the Industrial Court in the matter of elections can go into it, even if the matter is not referred to it in the manner set out under section 28A of the Trade Unions Act. In the instant case, we are concerned with the results of elections declared by the Commissioner on 13.11.2003 and the result accepted by the Court by its order dated 11.2.2004. We are clearly of the opinion that the first contention as raised on behalf of the petitioners will have to be rejected. Even if the Industrial Court had directed holding of elections, in terms of the order of the Court, it cannot go into the question of the validity of the elections, and issues like whether a person is an office bearer or a member. These are issues exclusively for the consideration of the Registrar under section 28A

of the Trade Unions Act. This fact the Court must have regard. This Court in the exercise of its writ jurisdiction will not confer jurisdiction on a Tribunal if it does not have and more so, considering the express language of section 28A of the Trade Unions Act.

15. The second contention as now raised on behalf of the petitioners may be dealt with. The Commissioner, it is contended, did not update the voters' list, but on the contrary, rejected the application for members being included in the voters' list on flimsy and unsustainable grounds. It is pointed out that while issuing the directions on 5.9.2003, the Industrial Court has observed that the voters' list be updated in terms of the constitution of the Union, the register of members maintained by the Union and by inviting objections, etc. The Commissioner should have given due regard to the said observations and not relied on the voters' list prepared by Gaikwad. It is also pointed out that the Commissioner had observed that only those persons who are workmen under the B.I.R. Act, 1946 should be allowed to vote or contest the elections, such a rule has excluded a large number of Union members from getting registered on the voters' list and from filing nominations. Various other points are sought to be pointed out in the manner of upgrading the

voters' list. To consider that contention, it would be necessary to consider the constitution of the Union and some of its relevant rules. The constitution of the Union permits admission of ordinary members who are employees in the electricity industry and also in the industries/sections/divisions connected with the electricity supply industry as set out therein as also the transport section of Bombay Electric Supply & Transport Undertaking. There is provision for honorary membership. The clauses which are relevant are clauses 5, 6 and 7 which read as under:-

> "5. FINES AND FORFEITURE
>
> A member failing to pay his monthly subscription for six months with the permission of the Managing committee or three months without the permission of the Managing Committee, shall cease to be a member of the Union. But he shall be entitled to rejoin the Union on paying his arrears.
>
> 6. BENEFITS
>
> No member of the Union shall be

entitled to any benefits that the Union may decide to give to its members unless he has been a member for at least six months and has paid all contribution.

7. A member of the Union who is in arrears with his subscription or dues shall not be entitled to any benefits until all arrears have been paid and a period of two months has elapsed from the date of payment of such arrears.

From the above, it will be clear that to be eligible to contest elections and/or vote at the elections, a member or an ex-member has to meet the requirements of clauses 5, 6 and 7. The Commissioner, therefore, had to take these factors into consideration and more so the order of the Industrial Court itself, as noted earlier, required the Commissioner to update the voters' list as per the constitution of the Union. Insofar as the various challenges to the rejection of applications as set out in para II under the heading "LEGAL SUBMISSIONS" of the Written Submission filed on behalf of the petitioners, it

will be clear that the Commissioner has considered the applications and has rejected the same for reasons given by him. The Industrial Court has set out that the Commissioner was appointed purely to discharge administrative functions. He is not a quasi-judicial authority and, therefore, really was not required to give reasons. After considering all that, the Industrial Court rejected the contentions as raised on behalf of the petitioners to the report of the Commissioner in the matter of updating the voters' list. It must be noted that the references which are pending before the Industrial Court are in the matter of reference referred to it by the Registrar in the matter of elections which were held at the Annual General Meeting held in the year 2000. The issue, therefore, of holding elections could not have been the subject-matter of the reference and the Tribunal was only restricted to exercise jurisdiction to the reference made to it. However, considering the grievance made by the parties, based on the order dated 26.8.2003 in Writ Petition no.1435 of 2003, the same may be considered. The learned Division Bench had merely issued directions to the Industrial Court that it may consider holding afresh elections for the next term. Based on that, the Industrial Court did direct holding of elections by appointing the Commissioner. All that which

will have to be considered at the highest is whether the Commissioner prima facie had conducted the elections in the manner required by the rules of the Union. The directions by this Court could not give jurisdiction to the Tribunal to inquire into the legality or whether the voters' list was correctly prepared and for that matter, whether any illegalities were committed for finalising the voters' list and/or whether the application for membership was wrongly rejected, considering the provisions of section 28A of the Trade Unions Act. These are matters which could be considered by the Registrar for a reference to the Industrial Court. Similarly, as already explained, the order of the Division Bench in Writ Petition no.2939 of 2003 while dismissing the petition, holding the dispute regarding elections can be agitated must be read in consonance with the law, viz., to the extent that it can be agitated before the Industrial Court. Every order or direction by a superior Court to subordinate Court or Tribunal, must be considered in the light of the jurisdiction which that Court or Tribunal can exercise. No superior Court can confer jurisdiction on a subordinate Court or Tribunal which it does not possess when a reference is made to it by the competent authority, in the present case, the Registrar of Trade Unions. What can be agitated is as explained earlier. That contention,

therefore, must also be rejected.

16. That brings us to the third legal submission as advanced on behalf of the petitioners that important admissions made by the Commissioner in his evidence in the Industrial Court have been ignored. The submission on behalf of the petitioners by pointing out to some purported admissions is that the elections held by the Commissioner is unfair, partial, undemocratic, unjust and illegal and the interest of justice requires that free and fair elections of the office bearers of the Union be conducted under the supervision of this Court. As we have narrated earlier, the petitioners before this Court are the representatives of Kottary group and D'Souza group. The finding of fact recorded is that R.K.Kottary had floated another Union viz., Mumbai Vidyut Kamgar Sangh. Insofar as the D'Souza group is concerned, D'Souza himself was the President of the Managing Committee when the elections were held in the year 2000. The Commissioner finalised the list of nearly 7,577 members. There was no contest as the number of candidates were equal to the number of seats that were to be filled in. In other words, even if the contention is considered that a large number of applications were rejected, numbering about 2023, yet the fact remains that there was a voters' list

of 7,577 members who could have exercised their franchise or contested the elections. Considering the limited jurisdiction that was available to the Industrial Court, it would not have been open to the Industrial Court, considering the scope of section 7A to undo the democratic process. In a democratic process, holding of election is one of the essential functions. The dispute of holding elections has to end somewhere in order to give certainty to the process and for the Union to have elected office bearers who can assume their responsibilities and discharge their duties and functions. The amendment of the Trade Unions Act, 1976 has taken away the jurisdiction which the Civil Court otherwise would have had and conferred it on the Registrar to make a reference to the Industrial Court for adjudication. Even otherwise, in our opinion, this would not have been an appropriate case where this Court ought to have exercised its extraordinary jurisdiction. The 1st petitioner in both the Petitions is the Union. How the other petitioner could exercise the right to file a petition on behalf of the Union is not understood. There is a finding of fact recorded that Kottary himself had floated another Union and got it registered. There must be some certainty to the election process and if any party is aggrieved, they have a remedy under section 28A of the Trade Unions Act. Another aspect

of the matter which has to be considered is that though the parties had not sought for examination of the Commissioner i.e. the Tribunal examined the Commissioner and who was cross-examined None of the parties led evidence in support of their contention that the evidence of the Commissioner is to be rejected. The Industrial Court, in our opinion, has committed no error of law apparent on the face of the record in accepting the report. On facts, this would not be a fit case for this Court to exercise its extraordinary jurisdiction.

17. In the result, the petitions are dismissed. Rule stands discharged. There shall be no order as to costs.

18. At this stage, the learned counsel for the petitioners seeks stay of the operation of this judgement. considering that there was interim relief protecting the office bearers to enter upon the office. On the facts and circumstances, the interim relief earlier granted to continue for a further period of four weeks from issuance of authenticated copy of this judgement.

Sd/-

(F.I. REBELLO, J.)

Sd/-

(S.R. SATHE, J.)